

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Matthew Kurtenbach,

Case No. 21-CV-2378 (NEB/ECW)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

Paul Schnell; Tracy Beltz; Jami Doeden;  
Laura Westphal; and Melissa Richer,

Defendants.

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In an order dated December 20, 2021, this Court denied the application to proceed *in forma pauperis* (“IFP”) of plaintiff Matthew Kurtenbach on the grounds that Kurtenbach had accrued three “strikes” under 28 U.S.C. § 1915(g) and was therefore ineligible to proceed IFP. (*See* Dkt. 5.) Kurtenbach was given 21 days to pay the \$402.00 filing fee for this matter and proceed as a non-IFP litigant, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Kurtenbach has not paid the required filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App’x 496, 497 (8th Cir. 2008) (*per curiam*) (“A district court has discretion to dismiss an action under Rule 41(b) for a

plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

### RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: January 19, 2022

s/Elizabeth Cowan Wright  
ELIZABETH COWAN WRIGHT  
United States Magistrate Judge

### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).